



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 13-137, CD1

RESOLUTION

AUTHORIZING THE EXECUTION OF LICENSE AGREEMENTS BETWEEN THE CITY AND COUNTY OF HONOLULU (CITY) AND THE DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII (DHHL) IN FURTHERANCE OF THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND DHHL PREVIOUSLY AUTHORIZED BY THE COUNCIL BY RESOLUTION NO. 09-343, CD1, AND RELATING TO THE SALE OR EXCHANGE OF PARCELS OF LAND LOCATED IN WAIAWA AND KAPOLEI, OAHU, HAWAII.

WHEREAS, Chapter 1, Article 8, Revised Ordinances of Honolulu 1990, as amended, provides that any intergovernmental agreement or any amendments thereto which places an obligation upon the City or any department or agency thereof shall require prior consent and approval of the City Council; and

WHEREAS, pursuant to Chapter 1, Article 8, Revised Ordinances of Honolulu 1990, as amended, the City Council adopted Resolution 09-343, CD1 on December 16, 2009, authorizing the execution of a Memorandum of Agreement (MOA) between the City and DHHL relating to the sale or exchange of parcels of land located in Waiawa and Kapolei, Oahu, Hawaii; and

WHEREAS, the MOA was executed effective March 10, 2010, by and between the City and DHHL; and

WHEREAS, the MOA provides that the City and DHHL shall execute license agreements with one another to allow each party to control and use the others' property prior to the closing of the sale or exchange of the subject parcels of land; and

WHEREAS, the MOA further provides that any license for the use of the properties described therein shall be subject to the approval of the City Council; and

WHEREAS, the City and DHHL are each prepared to execute the license agreements attached hereto as Exhibit "A" and Exhibit "B" in furtherance of the agreements of the parties set forth in the MOA; and

WHEREAS, while it is the Council's understanding that the proposed license agreement attached to this Resolution as Exhibit "A" is not intended by the MOA to operate as a lease, if it is so construed, the Council does approve of the proposed agreement pursuant to Revised Ordinances of Honolulu Section 28-3.1(10) and Section 28-4.1, and which Council further understands is not subject to bidding requirements under Revised Ordinances of Honolulu Section 28-3.1(10) since the subject parcels will be used by the DHHL, a subdivision of the State of Hawaii; and



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WHEREAS, the MOA provided for the sale or exchange of the subject parcels of land pursuant to the execution of a land sale or exchange agreement, and it is the Council's understanding that the City and DHHL will work to execute the land sale or exchange agreement as expeditiously as possible; and

WHEREAS, when considering the specific use of the parcels subject to the City's agreement with DHHL, attached as Exhibit "A," DHHL will work with neighboring landowners and resident communities to keep them informed of DHHL's potential use of the parcels; and

WHEREAS, when considering the specific use of the parcel subject to the City's agreement with DHHL, attached as Exhibit "B," the City will work with neighboring landowners and resident communities to keep them informed of its potential use of the parcel; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Council consent to and approve proposed license agreements attached hereto as Exhibit "A" and Exhibit "B" and by reference made a part of this Resolution; and

BE IT FURTHER RESOLVED that the Mayor or his designee is hereby authorized to:

1. Execute the License Agreement with the State Department of Hawaiian Home Lands in substantially the same form as the agreement attached hereto as Exhibit "A";
2. Execute any incidental or related agreements and documents in furtherance of the above License Agreement;
3. Execute the License Agreement with the State Department of Hawaiian Home Lands in substantially the same form as the agreement attached hereto as Exhibit "B"; and
4. Execute any incidental or related agreements and documents in furtherance of the above License Agreement;

and

BE IT FURTHER RESOLVED that the City administration provide the Council with a written report by December 1st of each year, providing an update of the progress



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 13-137, CD1

RESOLUTION

made to execute a land sale or exchange agreement between the City and DHHL and the expected date the administration expects to submit the agreement for approval by the Council; and

BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Mayor, the Managing Director, the Director of the Department of Budget and Fiscal Services, the Director of the Department of Facility Maintenance, and the Chairperson of the Hawaiian Homes Commission, Department of Hawaiian Home Lands, State of Hawaii.

INTRODUCED BY:

Ernest Martin (BR)

DATE OF INTRODUCTION:

June 18, 2013
Honolulu, Hawaii

Councilmembers

LICENSE AGREEMENT

THIS RIGHT OF ENTRY AND LICENSE AGREEMENT ("License Agreement"), made and issued this _____ day of _____, 20____, by and between the CITY AND COUNTY OF HONOLULU, DEPARTMENT OF FACILITY MAINTENANCE, whose post office address is 1000 Ulu`ohia Street, Suite 215, Kapolei, Hawaii 96707, hereinafter referred to as the "LICENSOR," and the STATE OF HAWAII, DEPARTMENT OF HAWAIIAN HOME LANDS, whose place of business is Hale Kalaniana'ole, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose mailing address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter referred to as the "LICENSEE." LICENSOR and LICENSEE are hereafter collectively referred to as the "Parties" and either may be referred to individually as a "Party," all as governed by the context in which such words are used.

W I T N E S S E T H :

WHEREAS, LICENSOR and LICENSEE have identified an opportunity to achieve their respective land use and management objectives through the conveyance of certain lands in Waiawa and Kapolei, Oahu, Hawaii, through either mutual fee simple sale or an equal-value exchange;

WHEREAS, LICENSOR is the fee owner of certain properties, identified as a portion of Varona Villages, situate at Kapolei, Oahu, and further identified as first, ~~a portion of~~ Tax Map Key No. (1) 9-1-
112 31.858
v 017:069, which consists of approximately ~~23.253~~ acres, and second, ~~a~~

✓ ~~portion of~~ Tax Map Key No. (1) 9-1-017:¹⁰¹~~075~~, which consists of approximately 18.808 acres;

WHEREAS, LICENSEE is the fee owner of Hawaiian home lands known as the Ewa Drum site situate at Waiawa, Ewa, Oahu, identified as Tax Map Key Nos. (1) 9-4-08:010 and (1) 9-6-03:044, consisting of approximately 55.⁸⁴²~~076~~ acres;

WHEREAS, LICENSOR and LICENSEE have executed a Memorandum of Agreement dated March 10, 2010 (MOA), that will guide and govern all actions necessary to accomplish the transfer of title to each respective property from each Party to the other by sale or exchange;

WHEREAS, the Parties have agreed to make continuous, good-faith, and diligent efforts towards finalizing the sale or exchange described in the MOA as soon as possible;

WHEREAS, LICENSOR and LICENSEE desire that pending the sale or exchange of properties between LICENSOR and LICENSEE, the Parties grant each other the necessary authorizations so that each may take possession of the other's property at the earliest possible moment;

WHEREAS, LICENSEE desires to have access to and use the City-owned property situate at Kapolei, Oahu for purposes described herein; and

WHEREAS, the areas that will be used by LICENSEE are shown in yellow on the map marked as Exhibit A, attached hereto and made a part hereof, hereinafter referred to as the "subject property";

NOW, THEREFORE, in consideration of the covenants of LICENSEE, as hereinafter contained, LICENSOR does hereby grant to LICENSEE this License to enter upon, have access to and use the subject property as

provided below, and LICENSEE does hereby covenant with LICENSOR as follows:

1. Term. The term of this License Agreement is for seventy-five (75) years, with the effective date of _____ or until such time as LICENSEE obtains fee simple title to the subject property, whichever occurs sooner, unless this License Agreement is sooner terminated as hereinafter provided.

2. License Fee. The license fee for the term of this License Agreement shall be the nominal sum of One Dollar (\$1.00).

3. Use. LICENSEE shall use the subject property for the development of housing for sale or rental in the City and County of Honolulu, as provided in section 6-46.3(e), Revised Ordinances of Honolulu, which use includes homesteading, residential housing, and other uses that would be allowed on Hawaiian Home Lands under the Hawaiian Homes Commission Act of 1920 ("HHCA"); in addition to other uses that may be approved by LICENSOR, provided that such approval shall not be unreasonably withheld.

4. Utilities. LICENSEE shall pay, when due, all charges and other outgoings of every nature and kind whatsoever, including all charges for utility services, which shall during the term of this License Agreement be lawfully charged, assessed, imposed, or become due and payable upon or on account of the subject property and any improvements hereafter permitted to be erected thereon.

5. Maintenance and Repair. During the term of this License Agreement, LICENSEE shall at its own expense repair and maintain any facility such as water, plumbing, piping, and electrical wiring in or

on the subject property; shall keep the subject property and all such facilities thereon in a strictly clean and sanitary condition and shall comply with all laws, ordinances, rules and regulations of the Federal, State, and County governments that are applicable to the subject property and any such facilities; and shall allow LICENSOR or its agents, at all reasonable times, free access to the subject property for the purpose of examining the same or determining whether the conditions herein are being fully observed and performed, and shall make good, or commence to make good, at its own cost and expense all repairs or maintenance within sixty (60) days after the mailing of written notice by registered or certified mail to the last known address of LICENSEE.

6. Right and Approval of Construction. LICENSOR grants to LICENSEE the right to construct, operate and maintain all improvements deemed appropriate by the Hawaiian Homes Commission on, within, under, over, and across the subject property, provided all plans and specifications for building meet all Federal, State and County requirements and standards.

7. Construction Standards. Any new construction must be in full compliance with all laws, ordinances, rules and regulations of the Federal, State and County governments.

8. Ownership/Right to Remove Improvements. All buildings or structures or other major improvements of whatever kind that LICENSEE constructs or erects on the subject property shall remain the property of LICENSEE during the term of the License Agreement. LICENSEE shall have the right, prior to the termination of this License Agreement, or

within such additional period as LICENSOR in its reasonable discretion may allow, to remove LICENSEE'S property from the subject property; provided that in the event LICENSEE shall fail to so remove such property within one hundred eighty (180) days after written notice to remove, LICENSOR may at its option retain such property or remove the same and charge the cost of removal and storage, if any, to LICENSEE. Upon request by LICENSEE, LICENSOR shall diligently support LICENSEE'S efforts to remedy and remove the causes of delay in the removal of LICENSEE'S property, provided that LICENSOR shall not be required to expend any funds in the effort. All insurance and condemnation proceeds pertaining to improvements on the subject property shall be the sole property of LICENSEE.

9. Waste/Unlawful Use. LICENSEE shall not do or commit or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the subject property, any nuisance, or any unlawful or improper use of the subject property.

10. Non-Discrimination. LICENSEE shall not use the subject property, nor permit the property to be used in support of any policy that unlawfully discriminates against anyone based upon creed, color, national origin, sex or a physical handicap. LICENSEE shall not practice any unlawful discrimination based upon creed, color, national origin, sex or a physical handicap.

11. Default of Licensee. It is expressly agreed that this License Agreement is contingent upon the continuing condition that if LICENSEE after a thirty (30) day demand, fails to observe or perform substantially the provisions contained herein, and if LICENSEE does

not commence to cure, and diligently continue to attempt to cure, such default within sixty (60) days after delivery by LICENSOR of a written notice of such failure by personal service or by certified mail to LICENSEE; or if the LICENSEE becomes bankrupt, insolvent or files any debtor proceedings or takes or has taken against it for good cause any proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Act seeking readjustment, rearrangement, postponement, composition or reduction of LICENSEE'S debts, liabilities or obligations; then in any such event LICENSOR may at its option cancel this License Agreement and thereupon take immediate possession of the subject property, after the passage of a reasonable amount of time for any right of action which LICENSOR may have. LICENSEE shall have the right, prior to any cancellation of this License Agreement, or within such additional period as LICENSOR in its reasonable discretion may allow, to remove LICENSEE'S property from the subject property; provided that after one hundred eighty (180) days written notice to remove, LICENSOR may at its option retain such property or remove the same and charge the cost of removal and storage, if any, to LICENSEE.

12. Assignment. Except as expressly provided in this License Agreement, this License Agreement is not transferable. At no time during the term of this License Agreement shall LICENSEE assign, mortgage or pledge its interest in this License Agreement in the subject property or its interest in the improvements hereinafter erected on the subject property without the prior written consent of LICENSOR, which consent will not be withheld unreasonably.

13. Sublicense. LICENSEE may sublicense all or a portion of the subject property to a qualified developer or tenants of housing projects developed pursuant to the HHCA, or for other uses authorized under the HHCA. Any developer, tenants of housing projects, public utility or other sublicensee shall include LICENSOR as an additional insured on all liability insurance policies required by LICENSEE in connection with any development, housing project, public utility or other use. All plans and specifications for any such development, housing project, public utility or other use shall be in compliance with all Federal, State and County requirements and standards, provided that nothing contained in this License Agreement shall be interpreted to impose additional City and County of Honolulu requirements on the development of State highways or other State infrastructure projects.

14. Insurance. LICENSEE is a self-insured State agency and shall not be required to maintain insurance.

15. Indemnity. LICENSEE shall release, defend, indemnify, and hold harmless the City and County of Honolulu, LICENSOR, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of LICENSEE or LICENSEE's employees, officers, agents, contractors, lessees, sublicensees or assigns under this License Agreement.

16. Hazardous Materials. LICENSEE shall not cause or permit the escape, disposal, or release of any hazardous materials on the

subject property. LICENSEE shall not allow the storage or use of such materials on the subject property in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the subject property any such materials except to use in the ordinary course of LICENSEE'S business, and then only after written notice is given to the LICENSOR of the identity of such materials and upon LICENSOR'S consent, which consent may be withheld at the LICENSOR'S sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by LICENSEE, then LICENSEE shall be responsible for the costs thereof. In addition, LICENSEE shall execute affidavits, representations and the like from time to time at LICENSOR'S request concerning LICENSEE'S best knowledge and belief regarding the presence of hazardous materials on the subject property placed or released by LICENSEE.

LICENSEE shall agree to indemnify and hold harmless LICENSOR, its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from any use or release of hazardous materials on the subject property occurring while LICENSEE is in possession, or elsewhere, if caused by LICENSEE or persons acting under LICENSEE. These covenants shall survive the expiration or earlier termination of this License Agreement.

For the purpose of this License Agreement, the term "hazardous material" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future Federal, State or County statute, regulation or ordinance, such as the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and the Clean Water Act, as amended, and also including but not limited to petroleum, petroleum-based substances, asbestos, polychlorinated-biphenyls ("PCB"), formaldehyde, and also including any substance designated by Federal, State or County regulations, now or in the future, as presenting a risk to human health or the environment.

Prior to the termination of this License Agreement, LICENSEE may be required to conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health and LICENSOR.

17. Surrender. Upon the expiration of this License Agreement, or its sooner termination as herein provided, LICENSEE shall peaceably and quietly leave, surrender and deliver to LICENSOR possession of the subject property. Without limiting LICENSEE'S rights to insurance and condemnation proceeds, LICENSEE shall have the option to surrender this License Agreement where the portion damaged through no fault of LICENSEE or taken renders the remainder unsuitable for the use for which the subject property was licensed. LICENSEE shall have the

right, prior to the expiration, surrender or sooner termination of this License Agreement, or within such additional period as LICENSOR in its reasonable discretion may allow, to remove LICENSEE'S property from the subject property; provided that after one hundred eighty (180) days written notice to remove, LICENSOR may at its option retain such property or remove the same and charge the cost of removal and storage, if any, to LICENSEE.

18. Costs of Litigation. In case either Party shall, without any fault on its part, be made a party to any litigation commenced by or against the other (other than condemnation proceedings), the Party at fault shall pay all costs, including reasonable attorneys' fees and expenses incurred by or imposed on the other. The prevailing Party in any dispute between the Parties shall be entitled to recover its attorneys' fees.

19. Abandonment. In the event this License Agreement shall be abandoned or shall remain unused for the purpose granted for a continuous period of one year, all rights granted hereunder shall terminate, and LICENSEE will remove its facilities, equipment and any approved improvements and restore the land as nearly as is reasonably possible to the condition existing immediately prior to the time of installation or construction of such facilities and any approved improvements, if any, LICENSOR hereby consenting and agreeing to such removal. Failure of LICENSEE to remove its facilities, equipment and any approved improvements and/or to restore the land within 180 days after notification to do same from LICENSOR by certified mail at LICENSEE'S last known address, will constitute a breach and LICENSOR

may remove LICENSEE'S facilities, equipment and any approved improvements and/or restore the land to a condition similar to that existing immediately prior to the time of installation or construction of such facilities and approved improvements and LICENSEE will reimburse LICENSOR for all reasonable costs in connection with the removal and/or restoration.

20. Definition of Subject Property. The term "subject property" when it appears herein includes and shall be deemed to include the portions of the City-owned lands described above and shown on said Exhibit A, and all facilities, buildings and improvements erected or placed thereon.

21. Miscellaneous.

a. Consents. Whenever under the terms of this License Agreement the consent or approval of either Party shall be required, such consent or approval shall not be unreasonably or arbitrarily withheld. If the Party receiving any request or consent or approval shall fail to act upon such request within sixty-five (65) days after receipt of written request therefor, such consent or approval shall be presumed to have been given.

b. Bind and Inure. This License Agreement shall be binding upon and inure to the benefit of LICENSOR and LICENSEE and their respective successors and assigns.

- c. Applicable Law; Severability. This License Agreement shall be governed by and interpreted in accordance with the laws of the State of Hawaii. If any provision of this License Agreement is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.
- d. Paragraph Headings. The headings of paragraphs in this License Agreement are inserted only for convenience and shall in no way define, describe or limit the scope or intent or any provision of this License Agreement.
- e. Licensee Accepts Subject Property "as is", "where is". LICENSEE accepts the subject property "as is," "where is", without any warranties or representations of any kind by LICENSOR, expressed or implied, as to the condition, merchantability or state of repair of the subject property or fitness of the subject property for any particular purpose.
- f. Counterparts. The Parties hereto agree that this License Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the Parties hereto, notwithstanding all of the Parties are not signatory to the original or the same counterparts. In making proof of this License Agreement, it shall not be

necessary to produce or account for more than one such counterpart. For all purposes, including, without limitation, recordation and delivery of this License Agreement, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands on the day and year first above written.

APPROVED AS TO CONTENTS:

CITY AND COUNTY OF HONOLULU
DEPARTMENT OF FACILITY MAINTENANCE

Director
Department of Budget and Fiscal
Services

By _____
Its Director and Chief Engineer

LICENSOR

Executive Director and CEO
HONOLULU AUTHORITY FOR RAPID
TRANSPORTATION

APPROVED AS TO FORM
AND LEGALITY:

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

Deputy Corporation Counsel

By _____
Jobie M.K. Masagatani, Chairman Designate
Hawaiian Homes Commission

LICENSEE

Approved by the HHC at its meeting
held on October 20, 2009

APPROVED AS TO FORM

Deputy Attorney General
State of Hawaii

EXHIBIT A

LAND COURT STATE OF HAWAII LAND COURT APPLICATION 1069

SUBDIVISION OF LOT 18280
AS SHOWN ON MAP 1442
INTO LOTS 18280-A AND 18280-B
AND DESIGNATION OF
RESTRICTION OF VEHICULAR ACCESS RIGHTS
AFFECTING LOTS 18280-A AND 18280-B

AT HONOLULU, EWA, OAHU, HAWAII

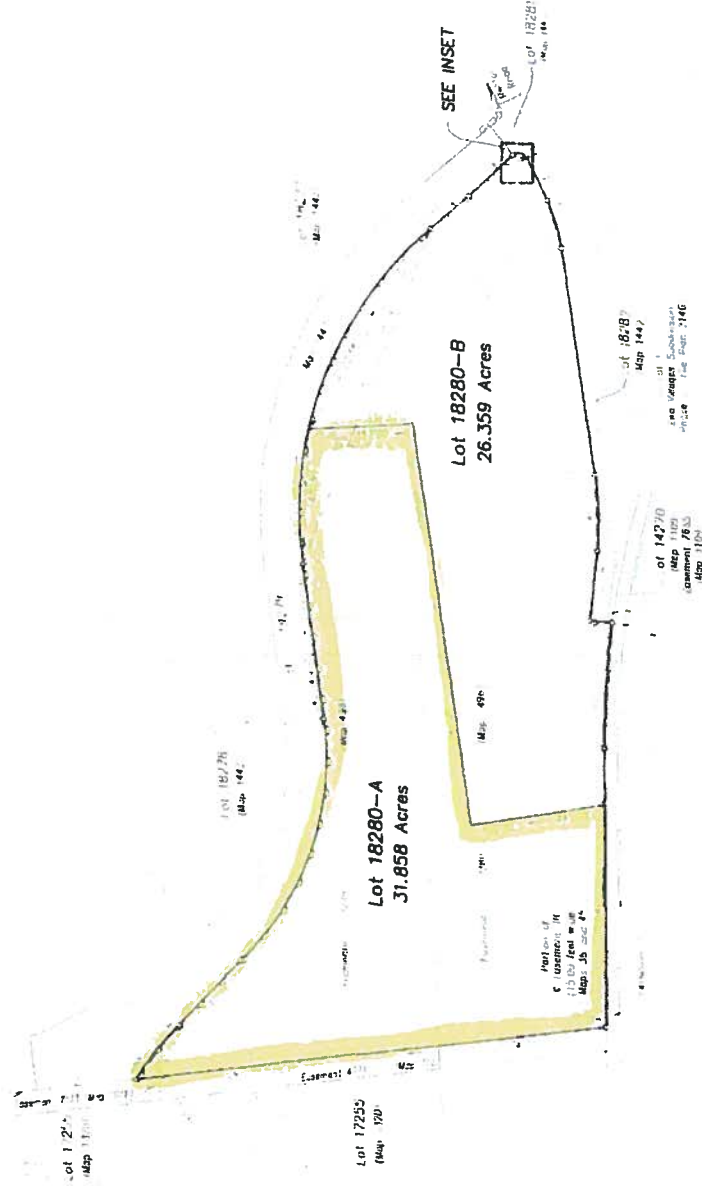
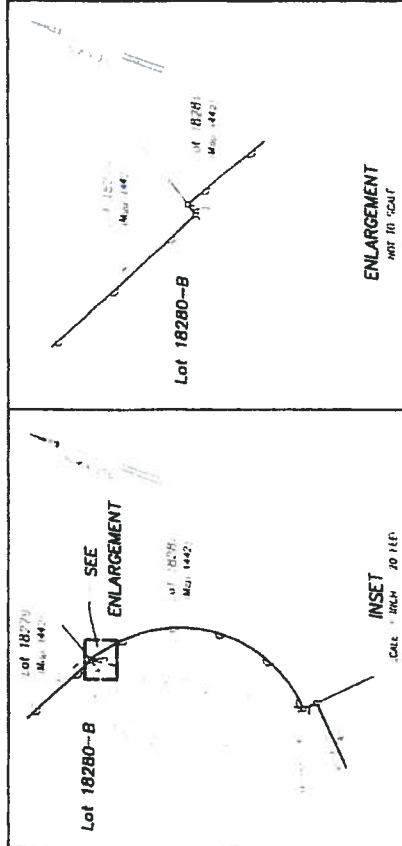


R. M. LOWELL CORPORATION
4/19/12
J. M. Akio, Licensed Professional Land Surveyor
Certificate Number 12749
Limit Land Certificate Number 31

OWNER: CITY AND COUNTY OF HONOLULU
TRANSFER CERTIFICATE # TITLE 455.921

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE
OF THE LAND COURT
BY ORDER OF THE COURT

Patricia J. Lawrence
REGISTRAR OF THE LAND COURT

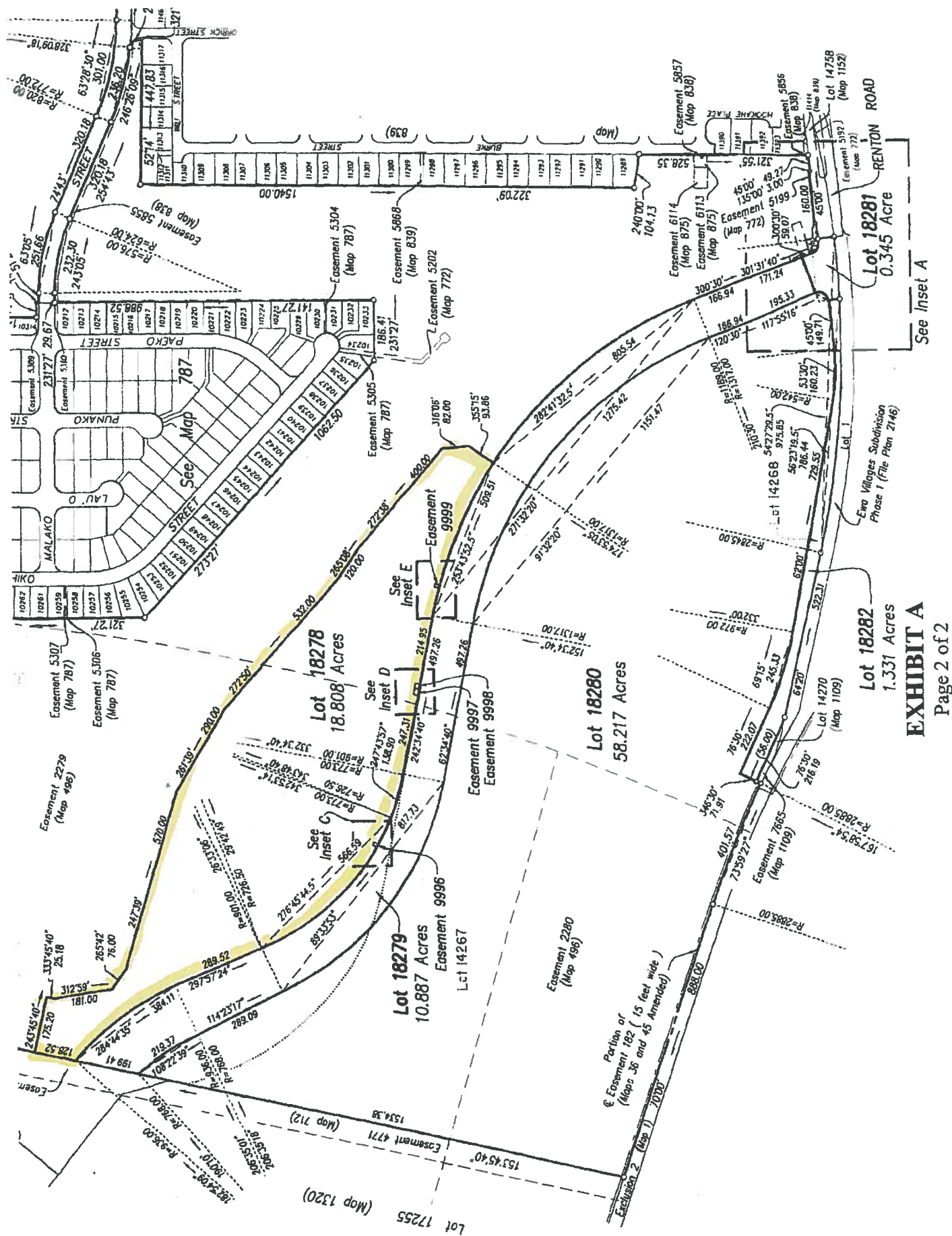


Note:

Removes No Vehicular Access Restriction

Filed/July 8, 2011 Patricia Lawrence, Registrar of the Land Court

EXHIBIT A



After Recordation Return By: Mail () Pickup () To:

Affects Tax Map Key: First Division, 9-4-008:010 & 9-6-003:044

LICENSE NO. 753

between

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
as Licensor

and
THE CITY AND COUNTY OF
HONOLULU
as Licensee

EXHIBIT "B"

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

LICENSE NO. 753

THIS LICENSE AGREEMENT ("License") made and issued this ____ day of _____, 20__, by and between the State of Hawaii by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose place of business is Hale Kalaniana'ole, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, and whose mailing address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LICENSOR," and the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose place of business and mailing address is 530 South King Street, Honolulu, Hawaii 96813, hereinafter called "LICENSEE." LICENSOR and LICENSEE are hereafter collectively referred to as the "Parties" and either may be referred to individually as a "Party," all as governed by the context in which such words are used.

WITNESSETH:

WHEREAS, LICENSOR and LICENSEE have identified an opportunity to achieve their respective land use and management objectives through the conveyance of certain lands in Waiawa and Kapolei, Oahu, Hawaii, through either mutual fee simple sale or an equal-value exchange;

WHEREAS, LICENSOR is the fee simple owner of Hawaiian home lands known as the Ewa Drum site situate at Waiawa, Ewa, Oahu, identified as Tax Map Key Nos. (1) 9-4-08:010 and (1) 9-6-03:044, consisting of approximately ⁸⁴²~~55.876~~ acres;

WHEREAS, LICENSEE is the owner of certain properties, identified as a portion of Varona Villages, situate at Kapolei, Oahu, and further

✓ identified as first, ~~a portion of~~ Tax Map Key No. (1) 9-1-017:069,¹¹²
✓ which consists of approximately ~~33.253~~^{31.858} acres, and second, ~~a portion of~~
✓ Tax Map Key No. (1) 9-1-017:075,¹⁰¹ which consists of approximately
18.808 acres;

WHEREAS, LICENSOR and LICENSEE have executed a Memorandum of Agreement dated March 10, 2010 ("MOA"), that shall guide and govern all actions necessary to accomplish the transfer of title to each respective property from each Party to the other by sale or exchange;

WHEREAS, the Parties have agreed to make continuous, good-faith, and diligent efforts towards finalizing the sale or exchange described in the MOA as soon as possible;

WHEREAS, LICENSOR and LICENSEE desire that pending the sale or exchange of properties between LICENSOR and LICENSEE, the Parties shall grant each other the necessary authorizations so that each may take possession of the other's property at the earliest possible moment;

WHEREAS, under Section 207(c)(1)(A) of the Hawaiian Homes Commission Act, 1920, as amended, and Section 10-4-22 of the Administrative Rules of the Department of Hawaiian Home Lands, as amended, LICENSOR is authorized to grant licenses for access to and use of Hawaiian home lands for public purposes;

WHEREAS, LICENSEE has requested a license to enter upon and use the Ewa Drum site for a maintenance and storage facility and guideway in connection with the Honolulu Rail Transit Project, formerly known as the Honolulu High-Capacity Transit Corridor Project, hereinafter referred to as the "Project"; and

WHEREAS, LICENSEE provides public transportation and related services to LICENSOR'S beneficiaries;

NOW THEREFORE, in consideration of the terms and conditions herein contained to be observed and performed by LICENSEE, LICENSOR hereby grants to LICENSEE this License to enter upon, have access to and use the parcels of Hawaiian home lands shown on the map marked as Exhibit "A" and more particularly described in Exhibit "B," both of which exhibits are attached hereto and incorporated herein, and further identified by Tax Map Key Nos. (1)9-4-008:010 and (1)9-6-003:044, containing a total land area of 55.⁸⁴²~~876~~ acres, more or less, hereinafter referred to as the "premises" and situate at Waiawa, Ewa, Oahu, Hawaii.

THE TERMS AND CONDITIONS upon which LICENSOR grants the aforesaid rights and privileges are as follows:

1. Term. The term of this License is for seventy-five (75) years, with the effective date of _____, or until such time as LICENSEE obtains fee simple title to the premises, whichever occurs sooner, unless this License is sooner terminated as hereinafter provided.

2. License Fee. The license fee for the term of this License, shall be the nominal sum of One Dollar (\$1.00).

3. Use. LICENSEE may use the premises for a construction staging area, a maintenance and storage facility ("MSF"), and a guideway in connection with Project purposes; in addition to other uses permitted under Section 207 of the HHCA and approved by LICENSOR, provided that such approvals shall not be unreasonably withheld.

LICENSEE is authorized to sublicense the premises to the Honolulu Authority for Rapid Transportation, a semi-autonomous agency of the City and County of Honolulu, to develop and operate the aforementioned Project.

4. Utilities. LICENSEE shall pay, when due, all charges, and other outgoings of every nature and kind whatsoever, including all charges for utility services, which shall during the term of this License be lawfully charged, assessed, imposed, or become due and payable upon or on account of the premises and the improvements hereafter erected thereon.

5. Maintenance and Repair. During the term of this License, LICENSEE shall at its expense repair and maintain any facility including water, gas, plumbing, piping, electrical wiring, and glass and any improvement installed or constructed by LICENSEE in or on the premises; shall keep the premises and all improvements thereon in a strictly clean and sanitary condition and shall comply with all laws, ordinances, rules and regulations of the Federal, State, or County governments that are applicable to the premises and improvements; and shall allow LICENSOR or its agents, at all reasonable times, free access to the premises for the purpose of examining the same or determining whether the conditions herein are being fully observed and performed, and shall make good, or commence to make good, at its own cost and expense all repairs or maintenance within sixty (60) days after the mailing of written notice by registered or certified mail to the last known address of LICENSEE.

6. Right and Approval of Construction. LICENSOR grants to LICENSEE the right to construct, operate and maintain the MSF and guideway on, within, under, over, and across the premises provided all plans and specifications for building meet all Federal, State and County requirements and standards.

7. Construction Standards. Any new construction must be in full compliance with all laws, ordinances, rules and regulations of the Federal, State and County governments.

8. Ownership/Right to Remove Improvements. All buildings or structures or other major improvements of whatever kind that LICENSEE constructs or erects on the premises shall remain the property of LICENSEE during the term of the License. LICENSEE shall have the right, prior to the termination of this License, or within such additional period as LICENSOR in its reasonable discretion may allow, to remove LICENSEE'S property from the premises; provided that in the event LICENSEE shall fail to so remove such property within one hundred eighty (180) days after written notice to remove, LICENSOR may at its option retain such property or remove the same and charge the cost of removal and storage, if any, to LICENSEE. Upon request by LICENSEE, LICENSOR shall diligently support LICENSEE'S efforts to remedy and remove the causes of delay in the removal of LICENSEE'S property, provided that LICENSOR shall not be required to expend any funds in the effort. All insurance and condemnation proceeds pertaining to improvements on the premises shall be the sole property of LICENSEE.

9. Waste: Unlawful Use. LICENSEE shall not do or commit or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the premises, any nuisance, or any unlawful or improper use of the premises.

10. Non-Discrimination. LICENSEE shall not use the premises, nor permit the premises to be used in support of any policy that unlawfully discriminates against anyone based upon creed, color, national origin, sex or a physical handicap. LICENSEE shall not practice any unlawful discrimination based upon creed, color, national origin, sex or a physical handicap.

11. Default of Licensee. It is expressly agreed that this License is contingent upon the continuing condition that if LICENSEE after a thirty (30) day demand, fails to observe or perform substantially the provisions contained herein, and if LICENSEE does not commence to cure, and diligently continue to attempt to cure, such default within sixty (60) days after delivery by LICENSOR of a written notice of such failure by personal service or by certified mail to LICENSEE; or if LICENSEE becomes bankrupt, insolvent or files any debtor proceedings or takes or has taken against it for good cause any proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Act seeking readjustment, rearrangement, postponement, composition or reduction of LICENSEE'S debts, liabilities or obligations; then in any such event LICENSOR may at its option cancel this License and thereupon take immediate possession of the premises, after the passage of a reasonable amount of time for any right of action which LICENSOR may have. LICENSEE shall have the

right, prior to any cancellation of this License, or within such additional period as LICENSOR in its reasonable discretion may allow, to remove LICENSEE'S property from the premises; provided that after one hundred eighty (180) days written notice to remove, LICENSOR may at its option retain such property or remove the same and charge the cost of removal and storage, if any, to LICENSEE.

12. Assignment. Except as expressly provided in this License, this License is not transferable. At no time during the term of the License, shall LICENSEE assign, mortgage or pledge its interest in this License or its interest in the improvements hereafter erected on the premises without the prior written consent of LICENSOR, which consent will not be withheld unreasonably.

13. Insurance. LICENSEE is self-insured and shall not be required to maintain separate insurance.

14. Indemnity. LICENSEE shall release, defend, indemnify, and hold harmless the State of Hawaii, LICENSOR, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of LICENSEE or LICENSEE's employees, officers, agents, contractors, sublicensees, or assigns under this License.

15. Hazardous Materials. LICENSEE shall not cause or permit the escape, disposal, or release of any hazardous materials on the premises. LICENSEE shall not allow the storage or use of such materials on the premises in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and

use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of LICENSEE'S business, and then only after written notice is given to the LICENSOR of the identity of such materials and upon LICENSOR'S consent, which consent may be withheld at the LICENSOR'S sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by LICENSEE, then LICENSEE shall be responsible for the costs thereof. In addition, LICENSEE shall execute affidavits, representations and the like from time to time at LICENSOR'S request concerning LICENSEE'S best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by LICENSEE.

LICENSEE shall agree to indemnify and hold harmless LICENSOR, its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from any use or release of hazardous materials on the Premises occurring while LICENSEE is in possession, or elsewhere, if caused by LICENSEE or persons acting under LICENSEE. These covenants shall survive the expiration or earlier termination of this License.

For the purpose of this License, the term "hazardous material" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future Federal, State or County statute, regulation or ordinance, such as the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and

Liability Act, as amended, and the Clean Water Act, as amended, and also including but not limited to petroleum, petroleum-based substances, asbestos, polychlorinated-biphenyls ("PCB"), formaldehyde, and also including any substance designated by Federal, State or County regulations, now or in the future, as presenting a risk to human health or the environment.

Prior to the termination of this License, LICENSEE may be required to conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health and LICENSOR.

16. Surrender. Upon the expiration of this License, or its sooner termination as herein provided, LICENSEE shall peaceably and quietly leave, surrender and deliver to LICENSOR possession of the premises. Without limiting LICENSEE'S rights to insurance and condemnation proceeds, LICENSEE shall have the option to surrender this License where the portion damaged through no fault of LICENSEE or taken renders the remainder unsuitable for the use or uses for which the premises were licensed. LICENSEE shall have the right, prior to the expiration, surrender or sooner termination of this License, or within such additional period as LICENSOR in its reasonable discretion may allow, to remove LICENSEE'S property from the premises; provided that after one hundred eighty (180) days written notice to remove, LICENSOR may at its option retain such property or remove the same and charge the cost of removal and storage, if any, to LICENSEE.

17. Native Hawaiian Rights. LICENSOR warrants that it has made a good faith effort to determine whether native Hawaiian traditional and customary rights have been exercised on the property and has found no evidence of such exercise.

18. Costs of Litigation. In case either Party shall, without any fault on its part, be made a party to any litigation commenced by or against the other (other than condemnation proceedings), the Party at fault shall pay all costs, including reasonable attorneys' fees and expenses incurred by or imposed on the other. The prevailing Party in any dispute between the Parties shall be entitled to recover its attorneys' fees.

19. Abandonment. In the event this License shall be abandoned or shall remain unused for the purpose granted for a continuous period of one year, all rights granted hereunder shall terminate, and LICENSEE will remove its facilities, equipment and improvements and restore the land as nearly as is reasonably possible to the condition existing immediately prior to the time of installation or construction of its improvements, if any, LICENSOR hereby consenting and agreeing to such removal. Failure of LICENSEE to remove its facilities, equipment and improvements and/or to restore the land within 180 days after notification to do same from LICENSOR by certified mail at LICENSEE'S last known address, will constitute a breach and LICENSOR may remove LICENSEE'S facilities, equipment and improvements and/or restore the land to a condition similar to that existing immediately prior to the time of installation or construction of its improvements

and LICENSEE will reimburse LICENSOR for all reasonable costs in connection with the removal and/or restoration.

20. Definition of Premises. The word "premises" when it appears herein includes and shall be deemed to include LICENSOR'S lands described above and all facilities, buildings and improvements wherever erected or placed thereon.

21. Miscellaneous.

- a. Consents. Whenever under the terms of this License the consent or approval of either Party shall be required, such consent or approval shall not be unreasonably or arbitrarily withheld. If the Party receiving any request or consent or approval shall fail to act upon such request within sixty-five (65) days after receipt of written request therefor, such consent or approval shall be presumed to have been given.
- b. Bind and Inure. This License shall be binding upon and inure to the benefit of LICENSOR and LICENSEE and their respective successors and assigns.
- c. Applicable Law; Severability. This License shall be governed by and interpreted in accordance with the laws of the State of Hawaii. If any provision of this License is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.

- d. Paragraph Headings. The headings of paragraphs in this License are inserted only for convenience and shall in no way define, describe or limit the scope or intent or any provision of this License.
- e. Licensee Accepts Premises "as is", "where is". LICENSEE accepts the premises "as is," "where is", without any warranties or representations of any kind by LICENSOR, expressed or implied, as to the condition, merchantability or state of repair of the premises or fitness of the premises for any particular purpose.
- f. Counterparts. The Parties hereto agree that this License may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the Parties hereto, notwithstanding all of the Parties are not signatory to the original or the same counterparts. In making proof of this License, it shall not be necessary to produce or account for more than one such counterpart. For all purposes, including, without limitation, recordation and delivery of this License, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the Parties hereto have caused these presents
to be duly executed the day and year first above written.

Approved by the HHC
at its meeting held on
October 20, 2009

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

APPROVED AS TO FORM:

By _____
Its Chairman Designate
Hawaiian Homes Commission

Deputy Attorney General
State of Hawaii

LICENSOR

APPROVED AS TO
FORM AND LEGALITY:

CITY AND COUNTY OF HONOLULU

Deputy Corporation Counsel

By _____
Its

LICENSEE

APPROVED AS TO CONTENTS:

Executive Director and CEO
Honolulu Authority for
Rapid Transportation

STATE OF HAWAII)
CITY & COUNTY OF HONOLULU) SS.
)

On this _____ day of _____, ___, before me appeared JOBIE M.K. MASAGATANI, to me personally known, who, being by me duly sworn, did say that she is the chairman Designate of the Hawaiian Homes Commission and the person who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the use and purposes therein set forth.

Notary Public, State of Hawaii

Printed Name: _____
My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: _____

Doc. Date: _____ or ☐ Undated at time of
notarization.

No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary

Date of Notarization and
Certification Statement

Printed Name of Notary

STATE OF HAWAII)
CITY & COUNTY OF HONOLULU) SS.
)

On this _____ day of _____, ___, before me
appeared _____, to me personally known, who,
being by me duly sworn, did say that he is the _____ of the
City & County of Honolulu and the person who executed the foregoing
instrument and acknowledged to me that he executed the same freely and
voluntarily for the use and purposes therein set forth.

Notary Public, State of Hawaii

Printed Name: _____
My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: _____

Doc. Date: _____ or ☐ Undated at time of
notarization.

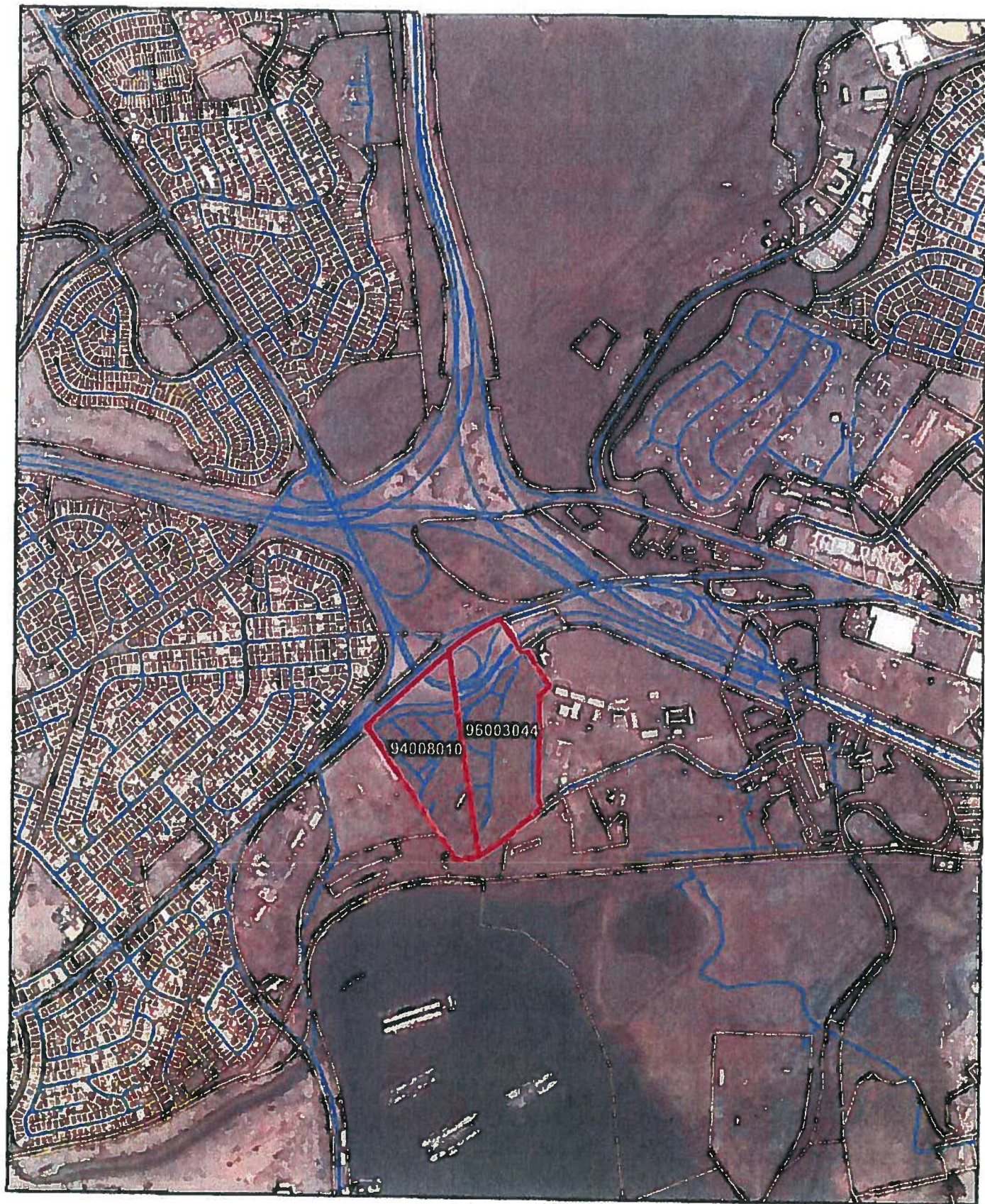
No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary

Date of Notarization and
Certification Statement

Printed Name of Notary

EXHIBIT A



Ewa Drum Site - Navy Drum Site

EXHIBIT B

EWA DRUM SITE – NAVY DRUM SITE

<u>Properties</u>	<u>Acres</u>	<u>Location</u>	<u>TMKs</u>
Ewa Drum Facility	55.842	Waiawa, Oahu	9-4-08:010, 9-6-03:044

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 13-137, CD1

Introduced: 06/18/13 By: ERNEST MARTIN (BR)

Committee: INTERGOVERNMENTAL
AFFAIRS AND HUMAN
SERVICES

Title: RESOLUTION AUTHORIZING THE EXECUTION OF LICENSE AGREEMENTS BETWEEN THE CITY AND COUNTY OF HONOLULU (CITY) AND THE DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII (DHHL) IN FURTHERANCE OF THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND DHHL PREVIOUSLY AUTHORIZED BY THE COUNCIL BY RESOLUTION NO. 09-343, CD1, AND RELATING TO THE SALE OR EXCHANGE OF PARCELS OF LAND LOCATED IN WAIAWA AND KAPOLEI, OAHU, HAWAII.

Links: [RES13-137](#)
[RES13-137, CD1](#)
[CR-236](#)

Voting Legend: Y= Aye, Y* = Aye w/Reservations, N = No, A = Absent, ABN = Abstain

INTERGOVERNMENTAL AFFAIRS AND HUMAN SERVICES	07/18/13	CR-236 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION AS AMENDED IN <u>CD1</u> FORM.
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COUNCIL	08/07/13	CR-236 AND RESOLUTION 13-137, CD1 WERE ADOPTED.							
ANDERSON	Y	CHANG	Y	FUKUNAGA	Y	HARIMOTO	Y	KOBAYASHI	Y
MANAHAN	Y	MARTIN	Y	MENOR	Y	PINE	Y		

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.


BERNICE K. N. MAU, CITY CLERK


ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER